



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
NATIONAL TELECOMMUNICATIONS COMMISSION
865 VIBAL BLDG., EDSA CORNER TIMES ST., Q.C.

DOCKET FILE COPY ORIGINAL

Office of the Secretary
Federal Communications Commission
1919 M. Street, N. W., Room 222
Washington D.C. 20554
United States of America

Feb. 4, 1997

IB DOCKET NO. 90-337

96-261

RECEIVED

FEB 11 1997

Dear Sirs,

I
Prefatory Statement

Federal Communications Commission
Office of Secretary

This position paper is being submitted by the Commissioner of National Telecommunications Commission of the Republic of the Philippines, which is the principal administrator charged with the duty of implementing and administering Republic Act No. 7925 enacted by the Congress of the Philippines on Feb. 20, 1995, more commonly known as the "Public Telecommunications Policy Act of the Philippines". It has the full endorsement and support from the regulated telecommunications carriers and providers in the private sector in the Philippines, as may be evidenced by the document attached hereto as Annex "A".

We thank you for your kind invitation requesting us to make our Comments on the subject covered by the Notice of Proposed Rulemaking released on Dec. 19, 1996 entitled "In the matter of International Settlement Rates, IB Docket No. 96-261". This position paper expresses in main the Philippine Regulator's Views, together with the inputs from the private sector on matters which are better known to them or where their particular expertise or competence can be availed of. By and large, this paper can be, and should be taken as the unanimous and common position of both the public and the private sector in the Philippines involved in the telecommunications industry.

We preface the declaration of our national position with the statement that we are cognizant of the fact that the Federal Communications Commission of the United States of America has issued the Notice in the belief, and with the intention of aligning its policies with the work undertaken in the international fora, particularly by the International Telecommunications Union (ITU) and the Organization for Economic Cooperation and Development (OECD) for the purpose

No. of Copies rec'd
List ABC

1 Original

of hastening the transition from the old model of monopoly providers to one which establishes and fosters competitive markets for telecommunications services.¹

We are elated that in your advocacy of the reform of the traditional accounting rate system, you recognize that any new policy must have sufficient flexibility to recognize market conditions and different degrees of economic development.

As stated earlier, the FCC Notice of Proposed Rulemaking dated Dec. 19, 1996 endorses tailoring the accounting rates with sufficient flexibility to the end that stronger measures can be taken to reduce accounting rates with countries in monopoly markets, where little progress towards significant reform of these rates can be observed. It also endorses that in competitive markets, major alternatives for providing international services, including the option of end to end service by a single supplier without the use of accounting rates should be considered; and lastly, in the case of developing countries which have in fact already introduced competition in their markets, or have agreed to do so, mechanisms must be adopted to assist them with a period of transition.²

Correctly applying such a sagacious policy, care must be taken by all parties to the multilateral relationships which have been entered into, that the explicit subsidy mechanism to be employed, in so far as developing countries are concerned, is exclusively utilized and targeted at expanding network infrastructure to promote universal access. This prevents such subsidies imbedded in the settlements, from being used or allocated to other unrelated activities, as has been found to occur in some jurisdictions in the past.

With these purposes and objectives in mind, we believe that we can present a country specific case for the Philippines, which will fairly and correctly result in a bilateral agreement to calibrate the downward reduction of accounting rates with a transition period of sufficient duration to provide a cushion which will allow the Philippines to build and roll out the sufficient number of local lines or the expansion of its network infrastructure in order to provide universal access and the telephone density level which assures the continued economic growth and prosperity of the Philippines under the administration of President Fidel V. Ramos. We further manifest that any relief or transition period granted to us should not be allowed to last longer than is necessary for the Philippines to carry out its program to promote telephone density and to put the necessary telecommunications network infrastructure in place.

As a developing country, we do not intend to demand or accept a subsidy, when the reason for it does not exist. This appeal that we be given a chance to

¹ See paragraph II, No. 14, FCC Notice of Proposed Rulemaking dated Dec. 19, 1996

² See paragraph II, No. 24. Idem.

first promote our telephone density and expand our telecommunications network infrastructure, will also give an opportunity for the U.S. carriers to earn and share in the continued growth of the international traffic between the Philippines and the United States, a growth which can only be achieved if the Philippine carriers are allowed sufficient time to roll out their local lines and its network infrastructure under the Philippine National Policies being pursued by the National Telecommunications Commission under Republic Act. No. 7925. In this manner, both the United States and the Philippines can enjoy the best of two possible worlds and both can meet their national objectives, without any dislocation to either of their plans. It will result in the continued growth of their symbiotic relationship which has been the hallmark of their mutually rewarding policies since the last turn of the century.

In the Dec. 19, 1996 FCC Notice of Proposed Rulemaking, foreign governments and carriers are asked to comment on four issues, to wit :

“First, how should benchmark settlement rates be calculated? Second, how long should the transition to benchmark rates last? In particular, should we provide a longer transition for developing countries and should we provide additional flexibility beyond any transition for countries committed to introducing competition? Third, what enforcement mechanisms are necessary to ensure carriers make progress in negotiating settlement rates within the benchmarks ? Finally, can the benchmark rates be used to address to competitive problems in the US IMTS market?”

II

The Philippine Factual Frame of Reference

In addressing the subjects where the Philippine position is graciously solicited, the following facts and principles are relevant and controlling in the manner, timing, as well as the applicability of the proposed benchmarks to the Philippines, in the context of the avowed objectives of the Notice of Proposed Rulemaking issued by the Federal Communications Commission.

Philippines already relies on private enterprise and disavows monopolies -

1. The Republic of the Philippines does not fall into the general historical pattern, where international telecommunications services have traditionally been provided largely by national governmental telephone monopolies. In such cases, the FCC Policy adopted a regulatory tradition originated in Europe, where international telecommunications were undertaken through a bilateral correspondent relationship between the national monopoly carriers. At that time,

apart from the United States, almost all communications systems were government owned. Markets were clearly delineated, customers were captive, and service offerings were homogenous.³

2. The Philippine scenario is more in keeping with the American experience. It has allowed private enterprise to become the engine of growth. As a matter of fact, in SEC. 4, sub-section c), Article II of Republic Act No. 7925, this policy has been confirmed, to wit :

“Public telecommunications services shall be provided by private enterprises. The private sector shall be the engine of rapid and efficient growth in the telecommunications industry.”

3. So much so, that the Philippine Long Distance Telephone Company, the pioneer telecommunications carrier in the Philippines, which, like AT&T in the United States, still appears to be the market leader, despite the introduction of aggressive competition, has always been privately owned, with its shares of stock listed in the New York Stock Exchange in the United States. As a necessary consequence, the company is now significantly owned by American citizens and corporations, as well.

4. Never having been a State Monopoly, like the ones predominantly established in Europe as a part of the Government's postal offices, it has never been a legalized monopoly. Under Philippine law, the franchise granted to the Philippine Long Distance Telephone Company is explicitly non-exclusive in character. As a matter of fact, many other companies had also been franchised on a nation-wide basis and healthy competition has never been foreclosed. Under the Philippine Public Service Act, Commonwealth Act No. 146, the only proscribed acts were those which went against the “prior operator rule”, which discouraged ruinous competition.

5. As a matter of fact, PLDT's prior dominance has already shown dramatic signs of the erosion of its market share by the new players or service providers recently authorized to operate by the NTC, even before the expiry of the completion time given to them for their respective programs of work, and the roll out of the lines authorized thereby.

6. It is also worthwhile mentioning that even in the more distant past, competition had already long been introduced by the defunct RCA, now operating as Philcom, its successor in interest, and the Eastern Telecommunications Philippines Inc., an affiliate of Cable and Wireless Company of Great Britain in the international field.

³ See p. 2, Policy Statement on International Accounting Rate Reform dated Jan. 31, 1996

**The Philippines already fosters competition
unparalleled by any other country -**

7. In recent years, the National Telecommunications Commission has further opened the Philippines to free competition in practically every sector of the telecommunications service. It has authorized at least fifteen service providers in the international field, in the rendition of inter-exchange service and the operation of local exchanges, over and above the approximately sixty seven local exchange operators previously in existence, all of them working together with the market leader, the Philippine Long Distance Telephone Company so as to promote telephone density and provide the most extensive access to basic telecommunications services at the most affordable rates.

8. Republic Act No. 7925 mandates that :

“SEC. 4 *Declaration of National Policy.* - Telecommunications is essential to the economic development , integrity and security of the Philippines, and as such shall be developed and administered as to safeguard, enrich and strengthen the economic, cultural, social and political fabric of the Philippines. The growth and development of telecommunications services shall be pursued in accordance with the following policies :

X X X X X X X X

f) A healthy competitive environment shall be fostered, one in which telecommunications carriers are free to make business decisions and to interact with one another in providing telecommunications services, with the end in view of encouraging their financial viability while maintaining affordable rates.” (ARTICLE II)

9. In the FCC Policy Statement on International Accounting Rate Reform dated Jan. 31, 1996, it is clearly pointed out that the consideration of the possible mechanisms to assist developing countries during a period of transition needed in order to prevent the dislocation of their plans to increase telephone density and improve their network infrastructure, is dependent on their agreement to reform accounting rates and their allowing competition within their jurisdiction. In this position paper, the NTC wishes to point out that under its policies, the Philippines has unquestionably earned the right to the deferral of the reduction of the accounting rates closer to cost so that the Philippines can be afforded the time to expand its telephone density to the desired level and improve its network infrastructure. As a matter of fact, the Philippine carriers, particularly the Philippine Long Distance Telephone Company, have long since been periodically negotiating

with AT&T, on the downward glide path of the applicable accounting rate from a high of \$3.00 in 1980, to a low of \$1.00 effective from April 1, 1996. On the second condition, it is clear that free competition has already been fostered, as shown by the fact that after the passage of the new Telecommunications Policy Act in 1995 67 local exchange carriers, nine international long distance carriers and five cellular service providers are now competing with the market leader, the Philippine Long Distance Telephone Company. Such a liberalization and deregulation is unequaled by any other country in the world today, and is irrefutable evidence that the Republic of the Philippines, as a developing country, has made a case that it deserves the application of a mechanism which will prevent the disruption of all its plans to make telecommunications service more widely accessible to a larger portion of its people.

**Cross subsidy, a cornerstone of
the current Philippine National
Telecommunications Policy -**

10. In the Philippine National Telecommunications Development Plan 1991-2010 (July 1993 Update), it is manifested that :

" In the Philippines, as in most developing countries, demand for telephone service outstrips supply. In most commercial settings, the appropriate economic response to this situation would be to raise prices. However, in the case of the Philippines, there is a need to promote the growth of basic telecommunications service in areas currently unserved or inadequately served - a situation which calls for low entry and use charges. In this environment, the following pricing seems appropriate :

Maintain the present low subscription and local use charges in development areas, in order to attract and keep subscriptions. The result is widespread basic service at relatively low rates.

Increase the installation charge, and increase local rates or introduce measured local calls, in mature-market metropolitan areas. Higher connection (installation) charges would reduce subscriber waiting lists, bringing demand and supply closer together, and add to the carriers' revenues. Similarly, charging for local calls would reduce congestion in the local exchange, thus improving the quality of service, and could increase the carrier's total revenues. The argument for raising prices in a mature market under supply constraints is that in a free market, price signals demand; those who need the service most (and will use it most) will be prepared to pay the higher prices of subscription and

use. It should be stressed that this approach would only be followed in developed urban areas where access to basic service is not an issue.

Consequently, long-distance (national and international) service should continue to be priced relatively high because most users are entities who are willing to pay the higher rates. The result is that long distance service cross-subsidizes losing services such as local connections and local calls. When there is an interconnection of a long-distance carrier's network to a local exchange, the cross subsidy helps the small company to survive and grow.

The provision of cross subsidies to marginally profitable or unprofitable local operations is facilitated when the carrier concerned has a mix of profitable or unprofitable services. A requirement that would-be operators of international gateway and cellular mobile telephone service should also provide local exchange service would promote the spread of such self-supporting operations. x x x " (p. 78, National Telecommunications Development Plan 1991-2010)

11. This Development Plan has been enshrined into law where the National Telecommunications Commission, as the principal administrator of Republic Act No. 7925 establishing the telecommunications policy of the Philippines, is obliged to :

" c) Mandate a fair and reasonable interconnection of facilities of authorized public network operators and other providers of telecommunications services through appropriate modalities of interconnection and at a reasonable and fair level of charges, which make provision for the cross subsidy to unprofitable local exchange service areas so as to promote telephone density and provide the most extensive access to basic telecommunications services available at affordable rates to the public." (SEC. 5, c) Article III. ADMINISTRATION)

12. In authorizing new franchisees as international gateway operators or international carriers, as well as duly enfranchised operators of mobile radio or cellular telephone systems, the National Telecommunications Commission exacted a condition that each one of them is obligated to roll out local exchange lines in unserved and underserved areas amounting to 300,000 lines and 400,000 lines respectively or 700,000 lines in case they are authorized to operate both services, within the period of three years required by law. The promised carrot to

induce them to roll out the new lines, was the attractive profit which they would derive from the higher tariffs in the international traffic and the mobile telephone or cellular business, which they could presumably continue to enjoy, in order to successfully amortize their local line build outs.

13. By the same token, the market leader, the Philippine Long Distance Telephone Company was asked to commit to the project - The Zero Backlog Expansion Program to further add to the telephone density goals set by the National Telecommunications Commission and improve the telecommunications infrastructure in the Philippines. Under the policy in place, the build outs are, and can only be feasible, if the cross-subsidy now in place is not immediately eroded by the reform of the accounting settlement rates moving closer to cost, as suggested in the Notice of Proposed Rulemaking. A too short a time table for the completion of the accounting rate reform would completely dislocate and disrupt all the telecommunications expansion plans which are now underway.

14. The Federal Communications Commission itself recognizes that an abrupt downward reduction of accounting rates to approximate cost will prove disastrous to the expansion plans of many countries, particularly the developing countries like the Philippines and that there is a need for a deferral mechanism or a transition period is indisputable. In the language of the FCC Notice, it is clearly stated that :

“24. This Notice also recognizes, however, that many countries will need time to adjust to more cost-based settlement rates. Indeed, many countries already are grappling with the difficult transition from an inefficient, high priced telephone system to a competitive and lower priced structure that will better serve their consumers and economies. A number of countries, for example, are undergoing the politically difficult task of re-balancing rates. We note that current settlement rates are generally much higher in lower income countries than in high income countries and in some countries settlement payments represent a high proportion of total telecommunications revenue. Immediate enforcement of lower benchmark rates could impose a substantial burden on these countries as they seek to develop their telecommunications networks. We therefore propose to implement our benchmarks in a way that provides a longer transition for developing countries and permits flexibility for countries that are making the adjustments necessary to introduce competitive reforms and move toward a more cost-based system of international settlement.”

**Cross-subsidization served, and
continues to serve mutual interests -**

15. In retrospect, in so far as it is applied to developing countries like the Philippines is concerned, the policy of subsidizing unprofitable local exchanges with the more lucrative international tariff component, served the best interests of the Philippine economy, as well as that of their joint venture partners, like the United States and the other more highly developed countries. This is recognized in the body of the FCC Notice of Proposed Rulemaking itself, and we quote :

“ We acknowledge the argument that substantially above-cost settlement rates are justified because they are used to subsidize network development in lower income countries. Such network development benefits not only the economies of lower income countries, but also the economies of the United States and other countries by providing the telecommunications infrastructure necessary to support international commerce and trade. x x x “

16. The need for the cross subsidy in the Philippine scenario is so glaring. The latest official figures show that the Philippines had a per capita income of approximately US\$1,130 and an estimated Telephone Density as of the end of 1996, of 3 Main Stations per 100 inhabitants, one of the lowest in the world. This is the reason why the US Carriers, such as AT&T, had heretofore agreed to the slower gradual downward glide path of the accounting rates, fully knowing that the cross subsidy imbedded therein, was going to be utilized to the benefit of all the parties. Their enjoyment of the results of such a policy mutually applied to advantage in the Philippines-United States traffic stream, compares favorably against the records of many of the more economically advanced countries in the world today. This was made possible only because of the previous accounting rate policies bilaterally agreed upon. It furnishes ample proof that while there may be a long term need for a more radical revision of such settlement rates, the past experience cannot be regarded to have resulted in a financial disaster for the American carriers or the American consumers. The accounting rates correctly agreed upon in line with the economic development of the Philippine economy as of that period of time, have successfully served the mutual interests of the United States and the Philippines.

17. The NTC believes that it is *apropos* to mention that the assistance and contribution of the United States carriers, given in the form of a favorable settlement rate or some other mechanism, was not intended to be an outright dole to the Philippine carriers, devoid of any purpose beneficial to the American carriers or the American consumers. The fact is that such assistance and contribution to the improvement of the network infrastructure of the Philippine carriers was calculated to protect the American carriers from the excessive expenses they paid

in the form of undue payments to the RBOC's on account of the inadequacy or deficiency in the network configuration or development of its Philippine correspondents.

18. Dating back to 1984, when the American telecommunications giant, AT&T, was dismantled and the Baby Bells were spinned off in order to operate the local exchanges in the various areas in the United States, AT&T had to pay the RBOC's \$0.25 per every call attempt on the Philippines-United States traffic stream. It needs no argument to conclude that if the percentage of completion of such calls was not improved, AT&T would continue to pay the RBOC's for every unsuccessful call attempt, such costs to be ultimately passed on by it to the American consumers. The records show that throughout all that period of time, on account of the low completion rate, AT&T was paying the RBOC's more than US \$0.50 for every completed call. This expense translates to about 60% of its operating expenses.

19. Faced with such a problem, the visionary and enterprising executives of AT&T in the Philippines in the person of Ron Carr, the Philippine AT&T Country Manager, assisted by Messrs. Stan Kozakowski and Dave Beaton, sat down with Mr. Felix Flores II, the head of PLDT's Long Lines Division and Nestor A. Virata, Senior Vice President, their counterparts in its Philippine correspondent, in order to devise ways and means of financing the Service Improvement Program of PLDT so that call completion rates could be improved, thereby reducing call attempts and correspondingly bringing down AT&T's operating expenses, by way of making less unnecessary payments to the RBOC's.

20. They came up with the AT&T Service Improvement Program, whereby AT&T offered financial and technical assistance to the Philippine Long Distance Telephone Company. History vindicates the soundness of such a policy and their financial contributions and technical assistance to its Philippine correspondent, have dramatically improved the completion rates to the Philippines. Their financial aid to the development of the network infrastructure of the Philippine carrier was motivated by self-interest, and rightfully so, because it allowed AT&T to cut the payment of unnecessary expenses to the RBOC's for uncompleted calls. Such a program is still on-going because the matter of the improvement of the completion rate is a constant one, considering the changes in technology, the constant change in the volume of the traffic stream and the ability, capacity and efficiency of the network infrastructure on both sides of the ocean required to handle the traffic efficiently at a higher completion rate. The Inter-Office Memo of Mr. Nestor A. Virata dated Jan. 28, 1997, together with a copy of the latest proposal of AT&T to PLDT dated June 17, 1994, attached hereto as Annexes "B" and "B-1" respectively, explains the workings of such a Service Improvement Program and the reasons therefor.

21. Such financial contributions of AT&T, as an American carrier, to the service improvement of its Philippine correspondent, PLDT, not unlike the so-called subsidy imbedded in the settlements, were driven by its very own self-interest and the use of the label "subsidy" is a misnomer, in the real sense of the word. Charity was never the over-riding consideration. To the extent that such financial inputs led, and continues to lead to higher completion rates, AT&T avoids the unnecessary expenses paid to the RBOC's for uncompleted calls. Such savings ultimately redound to the benefit of AT&T, as well as to the American consumer, benefited by the cheaper cost of completing the calls, reflected in lower international tariffs.

22. By the same token, the so-called "subsidy" imbedded in the settlement rates, which allows the Philippine carriers to improve and expand its network infrastructure, improves the completion rates, by increasing the capacity or efficiency of the network in order to allow it to handle a bigger volume of international traffic on the United States-Philippines traffic stream, is profit oriented, in so far as the American carriers are concerned. It cannot be denied that it also directly served the material interests of AT&T, all other American carriers and the American consumers, who are indirectly benefited thereby, in terms of lesser rates they have to pay on account of the reduction of the cost of completing their calls. The result of the bilateral negotiations conducted by the American carrier and its Philippine correspondent on this issue, attests to the sharp business sense of the American carriers, which calculated all its moves to maximize profits, by pruning unnecessary expenses. This shrewd policy ultimately protected the interests of the American consumer. We repeat - Charity was never a consideration, and rightly so. No wonder then, that in the FCC Notice of Proposed Rulemaking dated Dec. 19, 1996, the FCC, in its wisdom, ordained that even if the accounting rate applicable to a developing country is in excess of the cost level, if it serves to allow such a country to improve and expand its network infrastructure, business reasons dictate that the glide path of the reduction of accounting rates to a cost-level must still provide a transition period or a mechanism, which insures that the country's development plans are not adversely affected.

23. Allow us to anticipate and preempt the counter - argument that even if such policies prove profitable to AT&T and the other American carriers, the American consumer is nonetheless prejudiced by their having to pay the higher toll rates resulting from the so-called "subsidy". If we look at the larger picture, the American consumers have not been adversely affected. If the goal of the subsidy is to continuously expand the telecommunications highway, as well as to improve the percentage of completion of calls to the Philippines, the American consumer, given a choice, would opt to temporarily pay higher toll-rates, which eventually lead to a higher percentage of call completion's, as against electing to pay a lower toll rate, which result in their Philippine calls being aborted or remaining uncompleted; thus, perpetuating the higher toll rates passed on to them on account of the unnecessary payments to the RBOC'S.

24. Again, the stimulation of the growth of commerce and trade which has been experienced between the United States and the Philippines could not have been realized, if not for the sound judgment of the American carriers and their Philippine counter-parts in maintaining a policy of subsidization until such time as the Philippine economy improves to a point that the tariff rates in the Philippines can be re-balanced in order to give the local exchanges a feasibility - "on a stand alone basis" and the international collection rates can be reduced to the benefit of the subscribers. At such a point in time, the subsidy mechanism will be done away with, after having served the purpose for its existence in the past. The FCC Notice of Proposed Rulemaking concedes that this is a very politically sensitive decision, which can only be taken when the state of the economy of the developing country reaches a level that allows its local telephone users to pay the higher local tariff rates required. When this stage of the economy is reached, the dependence of the local exchanges on the cross-subsidy from the lucrative international collection rates, can be, as it should be eliminated.

**The subsidy does not boost the
revenue of Philippine carriers at
the expense of U.S. carriers -**

25. The linchpin of the suggested policy to reform the international accounting rate to a cost base is that the present accounting rates are unfair and prejudicial to the interests of the American consumers, who ultimately pay for the said subsidy. Applied to the Philippines, where admittedly there is an arithmetical imbalance between the number of calls between the United States and the Philippines resulting from the fact that more calls ostensibly originate from the United States because of the higher collection rates charged in the Philippines, the conclusion is made that such a state of affairs unfairly compels the American carriers to make high settlement payments to the Philippine terminating carriers. To the extent that the settlement balance is in favor of the Philippines and the American carriers become net debtors, the simplistic conclusion arrived at is that it is a "raid on the coffers" of the American carriers by the Philippine terminating carriers. In p. 3 of the FCC Policy on International Accounting Rate Reform dated Jan. 31, 1996, this subject is discussed lengthily, as follows :

"9. U.S. consumers are the largest users of international telecommunications services. For virtually all countries, a greater number of calls originate in the United States than are terminated here. Because originating carriers make settlement payment to terminating carriers, U.S. carriers pay substantial sums to foreign carriers. To the extent that accounting rates exceed the actual cost of terminating an International call, this payment is a substantial subsidy. Between 1985 and 1994, U.S. carriers

paid \$26 billion in settlement payments to foreign carriers; as much as one half of these payments may have exceeded the actual costs of terminating calls. This subsidy adds significantly to the cost of providing service and results in higher U.S. calling prices. Moreover, as national carriers become global carriers, this subsidy boosts the revenues of foreign carriers at the expense of U.S. carriers."

26. To a certain extent, the conclusions arrived at are a deceptive myth and appear to be more apparent than real. The over-simplification of the facts distorts the true basis of the relationship created and ignores the reasons for the imbalance, as well as the necessity and wisdom of setting the accounting rates at the levels agreed upon from time to time under the negotiations conducted between the U.S. carriers with their Philippine counterparts. Respect for the business acumen of the executives of U.S. carriers, notably those of AT&T, leads us to conclude that they had agreed to the levels of the accounting rate in effect from time to time, based on their sound judgment and belief that such accounting rates are not prejudicial to the American carrier's interests and that definitely - it does not and never did have a negative effect on their financial bottom line. As the prime movers in the telecommunications industry, their objectives are not, and should not be expected to be purely altruistic in character. Obviously, their shareholders will not permit them to indulge in such a luxury. The United States of America exemplifies the best in business and in the science of money, so that it is wrong to presume that in agreeing to the accounting rate levels in the past, the American carriers were merely carried away by their desire to unfairly enrich their undeserving foreign counter-parts. Upon sober reflection, can it be argued successfully that the mere fact that the settlement rates are not close enough to the pure cost of termination, should be considered the sole and over-riding factor in determining whether or not benefits have or have not been derived by both parties to the joint venture, or that only one of the parties has profited therefrom ? A negative answer suggests itself.

27. In so far as the Philippines is concerned, it may seriously be questioned whether the formulation of the new benchmarks and methodology now being suggested, is needed by the American carriers in order to give them more leverage in negotiating the glide path of the accounting rate reductions with the foreign carriers so as to make the accounting rates an effective factor in stimulating the growth of the international traffic and ensuring that the success thereof is equitably shared by the American carriers and the Philippine carriers, as well as the consumers in the Philippines and in the United States.

28. The implication is clear that such a move for a change is predicated on the assumption that during the past bilateral negotiations, the American carriers have not been able to protect the interests of the American public, as well as their own, and that the Philippine carriers have unduly taken advantage of their

liberality. So much so, that it is felt there is now a need for the FCC to come to their rescue by enforcing or insisting on terms and conditions more favorable to the American carriers, as against the terms and conditions agreed upon by the parties freely and without coercion at the negotiating table. As pointed out above, if the historical trend of the development and promotion of the traffic and revenue of the United States carriers and the Philippine carriers, notably the Philippine Long Distance Telephone Company, is reviewed and analyzed, it is far from clear that a conclusion can be derived that any significant undue advantage has been enjoyed by the Philippine carriers in their periodic rounds of negotiation with the American carriers.

29. The thrust of the message contained in the FCC Notice ignores the fact that the correspondents typically are both sophisticated entities that can, and do, negotiate commercially reasonable accounting rates which make for a fair sharing of the income derived thereby, and that the interests of the consumers on both sides of the ocean have also been duly served by the progressively more efficient telecommunications system made available to them.

30. The FCC Notice also fails to recognize the relative size, importance and strengths of the American carriers, compared with the Philippine carriers and that the American carriers ultimately have the option of utilizing transit routing (whether or not technically permitted) to mitigate any bargaining imbalances which may exist in some countries. Similarly, the FCC minimizes the fact that the FCC's International Settlements Policy ("ISP")⁴ likewise can mitigate any residual disparity that may exist. In the absence of significant bargaining leverage by the foreign correspondents, such as those operating in the Philippines under a fiercely competitive environment, the FCC should continue to view international operating agreements as commercial contracts between buyers and sellers of international telecommunications services and avoid intervention in the marketplace by either or both the FCC and the regulatory agency of the foreign country, which is the National Telecommunications Commission of the Philippines in this case.

31. The Notice also misrepresents or ignores the actual nature of the economic costs underlying accounting rates. It fails to recognize that such rates reflect additional factors, such as opportunity costs. The true "economic" rate for terminating international traffic includes many factors, such as this, which are not reflected by the FCC's book cost approaches and that are only vaguely addressed by the FCC's comparable rate approaches. As a practical matter, the accounting rates that correspondents seek to negotiate are more apt to reflect their position in

⁴ The ISP requires all U.S. international carriers providing the same service to the same foreign point to have the same accounting, settlement and division of tolls arrangements with the foreign administration, including an expectation that carriers will negotiate an operating agreement requiring the proportionate routing of return traffic.

the market place - i.e., the level of traffic balance – rather than any true “economic” cost of the telecommunications services. Like a typical seller, the carrier that terminates the larger amount of international traffic (often the foreign correspondent) has a natural incentive to negotiate the highest commercially reasonable accounting rate to maximize its profits, whereas, like a typical buyer, the carrier that terminates the smaller amount of international traffic (often the U.S. correspondent) naturally seeks to drive the accounting rate as low as possible.⁵

32. We recognize that the Philippines and the United States are bound together by closer ties because of their historical relationship and the spousal of their common beliefs, and on account thereof, the United States policy towards the Philippines may often be more benign or sympathetic. However, we do not have the naiveté to indulge in the belief that sentiment or historical ties are the basic instruments and the sole basis of our economic and business relationship. The arrangements must be mutually beneficial in order to be lasting and enduring. The long standing association between the American carriers and the Philippine carriers attests to the fact that mutual pecuniary or material benefits have been derived by both parties, without which the relationship would have been scuttled or abandoned by either or both of the parties a long time ago. The fact that the United States-Philippines revenue stream has grown to the extent that it has, confirms the wisdom of the policy to set the accounting rates at the levels agreed upon in the past and that it undeniably has allowed both parties across the ocean to generate the significant incomes derived by the American carriers and their Philippine correspondents.

33. This is not to speak of the successful concomitant growth of commerce and trade by their respective countries, peoples and companies, resulting from the roll out of the local exchange lines and the build out of the telecommunications network infrastructure, made possible by the subsidy component imbedded in the settlement rates, all of which have led to the completion of the necessary telecommunications highway required by the growing commerce and trade between the two countries. In the final analysis, “it is the music of the cash register” which all countries universally dance, hearken and listen to. A country specific analysis of the Philippines can lead to only one conclusion - neither the methodology or the benchmarks suggested by the FCC Notice should be strictly applied to the Philippines- American Traffic Stream.

⁵ It may be worth noting that the U.S. traditionally has been selective in its attempts to lower international accounting rates. It has sought to reduce such rates only when they do not benefit U.S. international carriers (e.g., with international voice traffic) but sought to maintain high rates when it benefited U.S. carriers (e.g., with international record traffic).

Country specific facts underlying the Philippine Scenario -

34. It must be stated with pride and a beaming feeling of unquestioned financial accomplishment that the United States carriers and their correspondents, view the results of their joint efforts in the development of the revenue from the American- Philippines traffic stream. Considering that the Philippines is merely a developing or emerging economy, it sounds like an economic aberration that according to reports, AT&T, the largest United States carrier, has been able to generate the seventh largest international revenue with its Philippine correspondent in the Philippines-American traffic stream in 1995 in its world-wide business. If the facts described in the FCC Notice of Proposed Rulemaking, were correct and indeed the financial condition of the American carriers and the American consumers have been savaged or sacrificed in the bilateral negotiations, this seemingly freakish financial success could not have been realized.

35. The explanation for such an astounding economic achievement has been attributed by the representatives of the American carriers, in a large measure, to the presence and contribution of approximately two and a half million Filipinos residing in the United States. They explain that the Filipinos residing in the United States are no longer the traditional "orange pickers" prevalent during the colonial days. They are now professionals, entrepreneurs, bankers and white and blue collar workers who have won their rightful place in the American firmament by sheer industry and the application of their intrinsic talents. Given, that the Filipinos are clannish in character and value family ties, coupled with their chatter box, loquacious, extrovert and demonstrative character, the fact remains that the impressive number of calls between the Philippines and the United States have been made in response to their constant desire to keep the family and fraternal fires burning. More of the calls understandably originate from the United States or are made by the local Filipino family members to their relatives, business associates and friends in the United States on a collect basis because the family members residing in the United States are generally more affluent. The fact remains, however, that a great number of the calls covered by the statistical data, have been made by Filipino families and consumers, irrespective of the origination of the calls. To the extent that these calls contributed, and still continue to contribute to the revenue stream between the United States and the Philippines, it can safely be said that such Filipino consumers account for a significant volume of the revenue from the U.S.- Philippines Traffic Stream generated in the manner described above.

36. Another reason for the imbalance between the out-payments of the American carriers, as against the settlement payments made by the Philippine carriers, can be ascribed to the successful promotion and growth of the Home Country Direct Services instituted by the U.S. carriers, such as the U.S.A. Direct Services operated by AT&T. These programs of the United States carriers entice

or encourage the Filipino consumers in the Philippines to make direct calls to the United States via the American carrier's operators. The calls are paid for on a collect basis by the Filipino relatives, business associates and friends in the United States, the recipients of the calls. In the settlements, this appears as part of the out-payments from the United States carriers to the Filipino carriers. However, as a matter of traffic flow, such calls actually originate from the Philippines and are deliberately promoted and encouraged by the U.S. carriers. It is, therefore, unfair to conclude that such out- payments appearing in the settlements of the U.S. carriers, are prejudicial to their financial or economic interests - when it was, and still is, deliberately promoted by them for only one simple reason - it generates income or profit for themselves arising from the large volume of calls from the Filipino callers in the Philippines, which they have succeeded to stimulate. These calls resulting in out-payments by the successful U.S. carriers, should not be lumped together with the other calls, the payments of which result in out-payments by the U.S. carriers for outbound traffic from the United States since they are a direct result of the success of the American carriers, themselves, in boosting the volume of calls actually originating from the Philippines to the caller's relatives and friends in the United States. Figures do not lie, but the underlying rationale and basis therefor may differ or lend themselves to conclusions far removed from what has superficially been derived.

37. To illustrate, from the records of the Philippine Long Distance Telephone Company highlighting the difference in the inbound/outbound traffic in the United State - Philippines traffic stream during the first half of 1996, the inbound/outbound ratio in relation to traffic flow is very much less than the inbound/outbound ratio in relation to settlement flow. The first has a call ratio of 3.8 from the United States to one call from the Philippines, while the settlement ratio is 7.7 settled or paid by the American carriers, as against one paid or settled by the Philippine carrier. What should not escape us, however, is that from a financial point of view, the more critical factor in determining the profitability of a particular traffic stream is its relative volume, as compared to that recorded in traffic streams from other parts of the world. We repeat, given the fact that the Philippines, one of the parties to the development of the United States-Philippines traffic stream, is just a developing country and that its telecommunications network infrastructure and telephone density is inferior to the rest of the world, the volume of traffic generated is a remarkable and impressive financial achievement, defying all the odds. It cannot be denied that it has also been a rewarding and lucrative business for the American carriers.

38. Another reason for the higher out-bound call volume from the United States, can be attributed to the Call-Back Service which has been legalized and encouraged in the United States. The volume from such calls should properly be considered part of the inbound calls from the foreign countries targeted by the U.S. Call Back operators, with a full knowledge that such a practice is illegal in the

foreign country being exploited.⁶ Again, the volume of calls attributable to the illegal activities of the U.S. Call-Back operators to the countries which have declared them illegal, one of which is the Philippines, has impelled FCC to officially recognize its illegality in so far as the Philippine-US traffic stream is concerned and has led FCC to officially assure the Philippine Government , that as a matter of international comity, it will act to protect the sanctity of Philippine laws against the continued violations by U.S based Call-Back operators.

39. While we are on this subject, it behooves to make the observation that it appears evident that the FCC is accelerating the reduction of the accounting rate to a cost base on account of its fear that if this is not accomplished, the US based Call-Back operators and other “free riders” can siphon off the revenue away from the traditional carriers which had put up the huge investments necessary to carry the traffic load on the United States-Philippines traffic stream. In effect, it amounts to a resignation, and a confession that the Call-Back operators and other “free riders” decide telecommunications policy and we merely conform to their designs and mode of conduct.

40. Unfortunately, after the FCC issued decision (FCC 95-224) confirming that call back using uncompleted call signaling violates neither U.S. domestic nor international law, it was stymied from taking any action against the call-back operators, which unfairly “traded on the investments” of the traditional American carriers , without which, the infrastructure necessary in order to service the telecommunications requirements of the global community, would not have been built. The rationale for the said decision was that the activities of the call-back operators redounded to the benefit of the American consumers, so that any injustice or damage inflicted on the traditional American carriers had to be overlooked. We accept that in the short term, it deceptively appears that such activities benefit and protect the American consumer.

41. In the long term, however, the American consumer will suffer and pay for the short term benefits they can derive therefrom. Why do we say this? Because the encouragement and legalization of the said activities will send a signal to the traditional carriers, which made the huge investment in building the required infrastructure, so that they will decide not make the same mistake and allow others, with a minimal investment, to take from them the traffic and revenue which they rightfully expected to reap from their investments. When the American consumers realize that the increased traffic volume requires more massive investments, can they rely on the slick and astute call-back operators and other “free loaders” to make the required investment? To ask this question is to answer it. At that point in time, the FCC and the American consumers will regret having been deluded into adopting a policy, which fails to consider the merits of protecting the investments of the traditional carriers. It is only fair to assume that

⁶ See par. 12, FCC Notice of Proposed Rulemaking dated Dec. 19, 1996

the carriers will not repeat the same mistake and make another huge investment, without any guarantee that their investment will receive the protection it deserves. The American shareholders of, and the investors in, the traditional carriers will refuse to be martyred again.

42. If the purpose in mind is to protect the interests of the traditional carriers from the activities of the "free riders", as the FCC professes it to be, other alternatives can be explored to prevent the hemorrhage in the revenue of the legitimate carriers occasioned by the activities of the "free riders". There are a number of alternatives which taken singly or together, will achieve the same purpose of preventing the "free riders" from unfairly taking the revenue arising from the use of the facilities constructed by the legitimate carriers or to deter the "free riders" from avariciously poaching on the turf of the legitimate carriers.

43 . We can cite the action of the Authorities and the Courts in the Philippines, which have declared call back activities illegal since it unlawfully transgresses on the legitimate businesses of the Philippine carriers, evade the payment of taxes lawfully due, and deprive the Republic of the Philippines of the foreign exchange inflow, which should have been received by the Central Bank of the Philippines in order to augment its foreign reserve. Incident thereto, such illegal operators have been locally hounded, and their lines disconnected or blocked, so that their activities can be curbed or deterred.

44. Realizing that the principals of the illegal call-back activities conducted in the Philippines are U.S. based persons and entities, the NTC has appealed to the FCC to use its powers to block and order the U.S. based call-back operators to desist from their nefarious activities in the Philippines and apply the sanctions incident to such illegal activities. In a letter dated Jan. 16, 1996 Ms. Dianne J. Cornell, Chief, Telecommunications Division, Federal Communications Commission, signified the willingness of the FCC to investigate and take appropriate action against US carriers that continue to provide international call-back service to the Philippines in spite of the prohibition for such service in our country. To date, inspite of the assurance of the cooperation by the FCC, we are not aware that the FCC has as yet taken any positive action in the premises. We appeal and request the FCC to make good its promise, to the end that the legitimate income of the American and Filipino carriers can be protected and shielded from such illegal activities.

45. We can also take the cue from the European Union, which is equally concerned about the US and other non-European call-back operators undercutting the business of the European carriers by offering cheaper rates, which they can afford to do because of their minimal investment and their "free riding" on the facilities financed by the European carriers. The remedy employed by the European Union allows National Authorities to impose value-added taxes on

outside providers of call-back and other phone services so that it can level the playing field.⁷

46. All these alternatives go to the heart of the matter and protect the legitimate carriers from illegal or unfair competition from call-back operators and other "free riders" illegally invading their business areas.

47. We appeal to the FCC to exercise such alternatives, or any other alternative which can be used for curbing illegal or immoral practices, rather than to confine its action to pressuring the legitimate carriers into accepting drastic cuts in their settlement revenues for the purpose of combating the illegal activities. Such alternatives can be instituted on higher moral grounds since they focus and direct the sanctions and enforcement mechanisms on the perpetrators of the illegal and nefarious activities, rather than to apply pressure on the legitimate carriers, the success of which can be counter productive, as will be explained elsewhere in this position paper.

48. We realize that the activities of the illegal operators thrive on accounting rates exceeding costs and that if we succeed in narrowing down such arbitrage window, their activities will be discouraged. We submit, however, if we take this easy avenue of relief, we upset the expansion plans of the developing countries, which depend on the subsidy, imbedded in the settlements, for the financing thereof and to the extent that the developing countries are deprived of such revenue source, the whole global network is seriously affected by the non-completion of the needed infrastructure projects.

49. If we, including the FCC, do not shift our attack directly against the call-back operators and other "free loaders", as against taking the suggested action which punishes the legitimate carriers, particularly in the developing countries, which deserve aid and assistance from the more highly developed economies, we have merely folded our arms in a spirit of defeatism, by allowing the perpetrators of the crime to raid the revenue of the legitimate carriers with impunity. It cannot be denied that if we take such alternative actions against the call-back operators and other "free loaders", the efficiency or success of their raids on the coffers of the legitimate carriers is affected and the carriers of the developing countries can have more time to bring down the accounting rates to a cost level.

50. One other factor affecting the balance of payments under the settlements made under the prevailing accounting rates is the fact the call ratio between the calls originating from the United States generally exceeds the number of calls originating from the Philippines. As explained earlier, this fact is recognized and is partly attributable to the telecommunications policy previously adopted, where the local exchanges in the Philippines have been cross-subsidized by the

⁷ See p. 11, International Herald Tribune Issue of Jan. 30, 1997.

income from the international long distance revenue of the Philippine carriers. As stated earlier, it was then, and is still considered necessary because of the low per capita income of the average Filipino, which would not have given rise to a larger volume of calls originating and paid for by them in the Philippines, given that they do not even have the financial capacity to pay higher local rates to economically justify the roll out of more local lines. As a result of this policy, the flat charge payable for the local service in the Philippines is one of the lowest in the world. The correctness of such a policy, applied to the level of the economic development of the Philippines in the past, is, however, recognized by FCC and cannot be seriously questioned. The fact that the rise of the international revenue from the United States - Philippines traffic stream has been phenomenal, despite the odds against any real growth in a developing economy, sans the adoption of the policy of cross-subsidization, attests to the wisdom and success of the policy adopted in the past.

51. As the economy of the Philippines improves and the per capita income of the Filipinos rise, the traffic flow out-going from the Philippines will naturally increase, if we take into account the affordability factor. Likewise, the growth of business and commerce between the United States and the Philippines will equally stimulate an increase in both the out-bound and the incoming calls between the United States and the Philippines. The growth of the over-all volume of calls from both sides of the ocean cannot but lead to higher revenues and income derived by the United States and Philippine carriers handling such a traffic flow. Again, as wisely observed by the FCC in its Notice of Proposed Rulemaking, the ability of the developing country to finance the development of its telecommunications infrastructure network must be assured, so that the subsidy imbedded in the settlement rate, cannot be removed too abruptly. Time or a transition period must be given to the developing country so as to allow it to institute tariff reforms or to re-balance its international and local rates to the end that the local line build outs can have a profitability on a "stand alone basis."

52. The FCC indeed recognizes that the immediate elimination of the subsidy, via an accounting rate adjustment, would be disastrous and detrimental to all the players in the United States-Philippines traffic stream. The following sequential facts must first be achieved :

a) The build-out of the necessary local lines and network capacity must first be achieved, otherwise the increased traffic in inbound calls, as well as outbound calls from the Philippines, cannot be physically handled. During this time, the subsidy must remain in place so as to insure that this build-out can successfully be financed and realized.

b) In a timely manner, the Philippine carriers shall apply for a reduction of the international collection rates, and seek an increase in its local rates, as a

necessary step towards cost orientation and its program of re-balancing its tariffs to insure the feasibility of the local exchanges on a "stand alone" basis.

c) The incentive and attraction resulting from the lower international collection rates due to the re-balancing of the Philippine tariffs, may be able to stimulate the elasticity or the growth of the out-bound traffic from the Philippines to the United States and thus, progressively narrow and bridge the imbalance in the number of calls originating from the United States, as against the volume of out-going calls from the Philippines. At such time, the need for the subsidy will diminish or finally disappear and the adjustment of the accounting rate settlements to a cost base can be agreed upon. Without all of these taking place, the potential additional volume of revenue which can be generated by the collection rate reductions to be applied for, cannot be realized since the infrastructure and capacity of the Philippine carriers to handle such a higher volume of out-going calls has yet to be placed in service. No real growth in international revenue can be realized until the demand for local service can be satiated under local tariff rates, which are affordable. It is the eventual size of the local caller base which ultimately allows a higher percentage of international long distance calls; provided, that the developing country is given the time and the opportunity to balance its rates, and in the process, reduce its international collection rates so as to stimulate and encourage the Filipino consumers to make more out-going international calls from the Philippines. This is the only genuine and realistic chance to reduce the settlement rate deficit of the American carriers, and should be the long term objective of FCC.

d) The Philippines does not intend to perpetuate such a subsidy, absent the need therefor. As noted in the Notice of Rulemaking released by the Federal Telecommunications Commission on Dec. 19, 1996, "Many countries (including the Philippines) have rate structures that use high international or domestic long distance charges to off-set below-cost local service fees."⁸ The unreasonable continuance of this policy cannot, and will not be tolerated by the NTC, which has exclusive jurisdiction, as the Philippine regulatory agency, and we wish to re-assure the FCC that such a policy will be reformed or even be done away with, if and when the need for it no longer exists.

53. The FCC Notice further makes the incisive observation that under the situation described in the paragraph immediately preceding, foreign countries may have substandard telecommunications infrastructure, including low levels of network build-out and low levels of network reliability. In such cases, an immediate shift to cost-based settlement rates could create adjustment problems for carriers in these countries while they are trying to re-balance rates and upgrade their network.⁹

⁸ See par. 45 of the FCC Notice of Proposed Rulemaking dated Dec. 19, 1996

⁹ See par. 61 Idem.

54. It is, therefore, the design of the Philippine Telecommunications Policy under Republic Act No. 7925, as it is being implemented by the National Telecommunications Commission, that a program to speed up the roll out of local lines and the improvement of the telecommunications network infrastructure at the earliest time possible, is carried out. For this purpose, legislative and executive time frames have been pre-set. This will enhance the telephone density of the Philippines in order to measure up and keep abreast with the progress of its neighbors. These plans were conceived and the implementation thereof were set into motion on the basis of the old tariff rate structures which contained the subsidy of the below-cost local lines by the above-cost settlements of the international revenues. A period of adjustment must, therefore, be considered so that the Philippines can smoothly re-balance its rates and eliminate the cross-subsidy in due time. As recognized in the FCC Notice itself, these steps are politically sensitive. Nonetheless, the Philippines is prepared to "bite the bullet" and take the necessary steps in this direction.

55. In the ultimate analysis, the deferral of the elimination of the above cost settlement rates is justified as long as the subsidy component is actually used in the network development in lower income countries, like the Philippines. The economies of the United States and other countries also stand to benefit therefrom because they are able to use the telecommunications highway resulting from such a network development program in order to promote their own commerce and trade with the Philippines.¹⁰

III Comments

1. We have presented a broad view of the Philippine telecommunications policies, its underlying philosophy, and the requirements in capital, engineering and technological applications to ensure its future economic growth. A perusal of the facts peculiar to the Philippines and its country's goals will readily lead to the conclusion that its ability to update its telecommunications network infrastructure in order to put it at par with its peers and synchronize its network development with the rest of the global network, is crucial. It is, therefore, imperative that developing countries, including the Philippines, be allowed; nay, encouraged to increase telephone density in order to maintain the viability of their systems. Any drastic change in any telecommunications policy which affects the Philippines adversely, will affect the viability of its programs to build its infrastructure up to the degree set by the Philippine Government and its National Telecommunications Regulator, the NTC. Any disturbance of such programs will financially prejudice its existing investors, both local and foreign, and deter any additional investment vitally required to reach or approximate the targeted goals.

¹⁰ See par. 59, *Idem*.

2. It will also have a calamitous effect on the international banks and financial institutions which granted the loans to the developing countries for the expansion and improvement of its telecommunications infrastructure. Such loans were extended on the assumption that the projects remain feasible, as long as the cross-subsidy policy remained in place. The eventual default by the developing countries in the servicing of such financial obligations if the cross subsidy is immediately yanked out, is a foregone conclusion, unless a transition period is given in order to give them the time to re-balance their tariff rates at a time when the growth or improvement of their GNP allows them to do so, without impairing the ability of their local subscribers to pay the higher local tariff rates.

3. The centrifugal ripples of such a failure will not only affect the Philippines. It will be felt globally, because the thrust of the policy to increase telephone density, together with its modernization, is to improve the efficiency of the total global network. The total system's strength and efficiency depends on the strength and the efficiency of its parts. Total global network efficiency and capacity is needed and, needless to say, all networks connected to such an efficient network also stand to benefit or to be prejudiced thereby.

4. As a matter of general policy and with the end in view of not transgressing on the jurisdiction of the regulators of other countries, we have heretofore refrained from making any comment on matters which are within the exclusive jurisdiction and competence of the regulator of a foreign jurisdiction. We have adopted such a policy, because we are equally minded to zealously guard and protect our domain from any intrusions by foreign agencies, however laudable their objectives may be, if and when they tread upon matters which are exclusively within our jurisdiction and authority. As an exception, in this case we have accepted the kind invitation of the FCC to present our national views on the subject of the international accounting rate reform in the process of formulation by the FCC. It deserves mention that during the recent visit of FCC Chairman Reed Hundt, he personally requested the NTC and the Philippine carriers to comment on the United States' plans so that the FCC could consider and recognize existing Philippine national policies and the impact of the FCC's proposed reform plans on the ability of the Philippines to move forward and improve its telephone density and network infrastructure.

5. It is in this spirit that we make our candid comments and observations in the hope that the FCC can realize its goal of protecting the interests of the United States of America, while according respect for the telecommunications policies of the Philippines set by our own legislature, as well as the policies of the NTC in the protection of our own national interests. FCC Chairman Reed Hundt, himself, "praised the Philippines for opening 'various aspects of the communication sector' to competition. x x x A principal purpose of my trip to the Philippines is to talk to Asian countries about their offers in the [World Trade Organization] talks that are

scheduled to end next February," he said. "If these talks are to succeed, it is important that the Philippines lead Asian countries in making better efforts."¹¹ He noted that since the Philippines adopted a new, pro-competitive telecom law in 1995, 67 local exchange carriers, nine international long distance carriers, and five cellular service providers have entered the market. He further said that he was glad to see that our national policy has successfully opened up the telecommunications sector of industry to competition in the private sector and that monopolistic policies are anathema in the Philippine environment. He noted that in the Philippines, under the National Telecommunications Policies laid down by Republic Act No. 7925, the only purpose for cross-subsidizing the losing or marginal local exchanges from the international revenue, was to allow the country to increase its telephone density and complete the development of its telecommunications infrastructure, applying a socialized tariff in order to allow the citizens in the lower income strata of the community to afford and avail of local telephone services at a minimal cost. This, until the Philippines can successfully re-balance its rates and gradually depart from its standing policy of cross-subsidization. FCC Chairman Reed Hundt, as well as the language of the FCC Notice itself, recognize and accept that such a Philippine Policy is a legitimate and politically sound one, the success of which has redounded, not only to the benefit of the Philippines, but to the whole global community.

Jurisdictional and legal issues -

6. In the past, all the regulators of the countries which contribute to the entirety of the global network, including the FCC and the NTC, had carefully refrained from interfering with the bilateral negotiations between their respective carriers and their foreign correspondents on the matter of accounting rates, leaving it to the parties to arrive at commercially negotiated terms determined by the factors in the market place. We did so, because of our consciousness that all of us had no jurisdiction over the others' carriers, except in the instances when they actually operate or conduct activities within our domestic jurisdiction. The authority and jurisdiction of the NTC is usually confined to the subject of the approval of the tariffs and collection rates of the Philippine carriers and by the same token, the FCC and other telecommunications regulators in their respective jurisdictions are also confined, in the exercise of their authority, to set rates only for their national carriers and not for foreign carriers operating from without their particular national and territorial jurisdiction. As stated earlier, the settlement of accounting rate issues between carriers operating in different jurisdictions is better left to the ability of the carriers to arrive at a bilateral commercially negotiated agreement.

7. Pekka Tarjanne, Secretary General of the ITU confesses that even the ITU is bereft of any jurisdiction or role in negotiating accounting rates which are,

¹¹ See p. 17, Vol. 62, No. 50, Telecommunications Report dated Dec. 16, 1996